THE LEX MURDRORUM

AN EPISODE IN THE HISTORY OF ENGLISH CRIMINAL LAW

HOMICIDE became a plea of the crown by way of the king's peace. It is a long story this, in which the group of kindred had first to admit the king's claim to *forisfactura* in special cases and to give up the feud in exchange for compensation. Ultimately, even this was absorbed by the royal prerogative of forfeiture: all that was left to the kindred in satisfaction of the ancient instinct of bloodrevenge was the appeal, which was again in course of time duly to be superseded by the plea of the crown. Even in the laws of Aethelbehrt and Ine, in which homicide is treated as properly a private wrong, we have vague hints of what was to come. But the details of the story need not here be repeated. Suffice it to say that a turning-point in the development of homicide as a crime appears, as indeed we should have anticipated, to have taken place at some time in the eleventh century. The appearance of a tolerably well-defined criminal law not only predicates but is apt to ensue upon a preliminary centralization of administrative authority.

For illustration, let us glance at the laws of Cnut, which according to Liebermann speak from about 1030.[1] In the *Institutio Secularis,* we discover an early attempt to generalize the especial rights of the king, of which perhaps the most important for our purposes is the *mundbryce* implying a royal jurisdiction over breaches of the king's "handpeace."[2] We also find an early version of the rule which was in time to make of felony a royal perquisite, the rule that the outlaw or, more specifically, he who does a deed of outlawry, is in the king's mercy.[3] But at best the list of kingly rights is limited and we find no suggestion that the peace of the king was in any sense universal or unique, for alongside of it we observe

[1] 3 LIEBERMANN, GESETZE DER ANGELSACHSEN, 194.

[2] 2 CNUT, 12. The references throughout to the Anglo-Saxon laws are to the texts as found in 1 LIEBERMANN, *op. cit.*

[3] 2 CNUT, 13.

the peace of the church, the noble, or the hundred. Turn we to the so-called *Leges Henrici* of almost a century later and the list of *iura regis* is not only indefinitely extended but it is preceded by the significant statement, — "Haec sunt iura que rex Anglie solus et super omnes homines habet in terra sua."[4] True the interest of the kindred in the event of homicide has as yet in no sense been excluded nor is the jurisdiction of the king over homicide complete or even exclusive within its sphere. But it is at least noteworthy that a theory of pleas inhering solely and generally in the crown has been announced. What has taken place in the meantime?

Assertion is perilous, particularly when the evidence is as fragmentary as that from which we have to proceed in dealing with the eleventh century and its laws. The inference from the Anglo-Saxon laws, however, is that in pre-Norman times the king clearly did not pretend to a jurisdiction over homicide as such. Some additional element was requisite before the king would intervene, be it breach of a peace specially declared or given by the king,[5] insult to his dignity,[6] or injury to his interests as warlord or *dominus*.[7] And, save for such argument as we can draw from the principle that the king stood *in loco parentum* to those who were without kin,[8] there is nothing to show that the king busied himself with those cases in which the system of bloodrevenge would be least effective, the cases of secret homicide. We may note in this connection that in almost the only passage of pre-Norman times in which we have a reference to secret homicide, it is provided simply that, if there be *apertum murdrum*, the malefactor is to be handed over to the kindred.[9] On the other hand, we know that almost from the time of the Conquest the

[4] LEGES HENRICI, 10, 1.

[5] See note 38, *infra*.

[6] Offences committed in the king's presence or *vicinia* involved increased penalties. Thus AETHELBEHRT, 3, provides double *bot* for offences perpetrated in a house where the king is drinking. Similarly, brawling in the king's presence was punished by loss of life or *wergeld*. GRITH, 15. For numerous similar examples *cf.* 2 LIEBERMANN, *op. cit.*, 551, *sub voce* "Königsfrieden."

[7] Thus AETHELBEHRT, 6; II Cnut, 42.

[8] See *infra*, notes 22, 39–43.

[9] 2 CNUT, 56. *Cf.* 2 CNUT, 64; 6 AETHELRED, 36; and *infra*, note 21.

cornerstone in the policy of the Norman kings was to use the administration of justice as a means of securing and maintaining preëminent power in the state, political and financial as well as jurisdictional; and that the development of a royal criminal law was a part of the grand design. Would it then be too much to regard the introduction of a doctrine by which the king asserted presumptive jurisdiction over all cases of secret murder as a significant step in the extension of the king's jurisdiction over homicide? Such was the doctrine developed in the eleventh century as a result of the *lex murdrorum.*

The *Textus Roffensis* has preserved for us in the so-called *Articuli Willelmi I* what is in all probability the earliest authentic reference to the *lex murdrorum* in the English laws. It will be recalled that in these *Articuli* the law of Edward the Confessor is confirmed [10] and in addition the supplementary legislation of the Conqueror is declared, very possibly in part quite as enacted at Gloucester. Most significant of these provisions are the requirement from every freeman of an oath of fealty to the king,[11] and the murder legislation.[12] Our inquiry, therefore, may well start from this point.

Let us pause for a moment, however, before touching the origin and implications of this legislation to note the situation by which it was evoked. The fact is that the juxtaposition of the oath of fealty and the murder fine was by no means accidental. Both were the shrewd measures of a military conqueror whose position directly rested upon the faithfulness of his followers and consequently required the adequate protection of their life and morale. In the background there lay a realm rent by conquest and civil war. Not to refer to uninterrupted intestinal disorders, twice within scarce more than a century, it will be remembered, had England been successfully invaded by the foreigner, whose continued presence in the land was calculated to provoke the sullen Saxon to clandestine reprisals. From the invader's point of view, the situation was aggravated by the fact that those who were thus made the objects of a not too

[10] ARTICULI WILLELMI I, 7.

[11] *Idem,* 2.

[12] *Idem,* 3 and 4. For the text of these sections see *infra,* note 45.

subtle retaliation were usually without the normal protection afforded in those troublous times by membership in some kinship group. Hence, the *Dialogus de Scaccario* tells us that after other "exquisite torments" had failed to protect their compatriots,[13] the Norman kings had resort to the notorious *lex murdrorum*, which at once extended the king's peace to his most faithful followers and also lined the royal purse. By its provisions the local unit, the vill or hundred, was held accountable for the mysterious murder of a Norman and, unless justice were shortly had of the slayer, subjected to a crushing fine.

It is a commentary upon the possible fate of legislation that for two centuries and a half after the murder fine had been enumerated as an abuse in the coronation charter of Henry I,[14] it was still exacted as a source of revenue too lucrative to be abandoned by the king or his officials. This circumstance, however, perpetuated what might well have been a temporary military regulation as well as the distinction which it raised between secret and open homicide as an integral part of English criminal law until 1340, when *murdra* were formally abolished by statute.

Whence came this legislation? In effect, we have to choose between one of two theories as to its antecedents and its origin: either (1) that the imposition of the murder fine was to all intents and purposes an invention of the Conqueror, doubtless suggested to his fertile statesmanship by the difficult position which his followers occupied in a strange and hostile land, a plausible suggestion, for the Caesars of all times are wont to protect themselves by laying indiscriminate tribute;[15] or (2) that it was the Norman adaptation to Norman purposes of a penal procedure, which, however sporadically, had already been applied to their rebellious subjects by the Danish monarchs.[16]

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[13] Liber I, x.

[14] STUBBS, SELECT CHARTERS, 101, § 9.

[15] This is the more generally accepted modern view and has the support of 1 FREEMAN, NORMAN CONQUEST, 736, and of 2 LIEBERMANN, *op. cit.*, 593, *sub voce* "Murdrum," who has there marshalled a number of arguments in its favor.

[16] Responsibility for this view lies in the first instance with the unnamed writer of the LEGES EDWARDI CONFESSORIS. See the LEGES, § 16. BRACTON, fol. 134b, almost word for word repeats the account there given. Following Bracton, the writers have until recent times ascribed the origin of the murder

The third alternative suggested by William of Malmesbury, to the effect that King Alfred introduced *murdra,* may in the absence of any corroborative evidence be disregarded as the apocryphal attempt of a chronicler to explain a doubtful origin by reference to a semi-legendary hero.[17] As between the first two hypotheses, the absence as yet of anything like conclusive evidence compels a discreet reticence: at the most is it possible to marshal the known facts.

With regard to the first of the explanations as to the origin of the murder law, it is suggestive that this legislation was obviously included in the *Articuli Willelmi I* as one of the modifications which were added upon the confirmation of the law of Edward the Confessor by his adoptive heir and successor.[18] And in Richard Fitz-Nigel of the next century we have a semi-official witness to the effect that *murdra* were imposed by the Norman kings as the result of a policy finally evolved after the Conquest when other means of repression had failed.[19] But the argument which seems to have led the most recent investigators of the subject to regard the *murdrum* as a Norman innovation is the *argumentum ab silentio.* We search the Anglo-Saxon or Danish dooms in vain for even the hint of a murder fine imposed by the king upon a community. Indeed, the point may at least be raised, whether, in view of the scant allusion made in these laws to secret homicide, the conception of *mord,* well-known on the Continent, was indigenous amongst the Anglo-Saxons.[20] Certain it is, that the few pas-

fine to the Danes and to King Cnut in particular. Thus, the MIRROUR OF JUSTICES, Calvin's Case, Coke in the INSTITUTES, Hale, Hawkins, Selden, Blackstone, Reeves, Inderwick, etc.

[17] STUBBS, WILL. MALMES, GEST. REG., 129, and see the editor's remarks, p. xxxi. William of Malmesbury of course wrote some two hundred years after Alfred.

[18] Sec. 7.

[19] *Loc. cit.*

[20] As to the conception of *mord* amongst Germanic peoples, see 2 BRUNNER, DEUTSCHE RECHTSGESCHICHTE, 627 ff, and the references there given.

It is of course well-known that the customary laws of various of the Germanic peoples on the Continent provide specially condign punishment for the slayer who deals his blow by stealth or in the dark or who defaces his victim, — the "murderer." The question here raised is whether we may venture to argue from these provisions to a similar idea amongst the Angles and their neighbors in England. In the opinion of the writer the argument in the present

sages in the laws in which secret homicide is distinguished are of a period subsequent to Danish influences and in some instances they betray a somewhat ecclesiastical flavor.[21] Whether we are to see in these passages the hand of the Danish king or of his coadjutor, the bishop, it is unnecessary and difficult to decide; the point remains that, even though King Cnut in another connection asserts his privilege as protector of the kinless, clerical or alien,[22] we find no mention there or elsewhere of special protection afforded the Danes or other aliens by *murdra*. Rather was equality to reign between Dane and Angle, if we are to confide in the principle piously enounced in the laws of Cnut:— "The whole realm of England is to be ruled by one law."[23] The net result of the foregoing considerations is to raise some presumption against the imposition of the murder fine in pre-Norman days. But at most the argument from silence can show only a presumption and, when applied to an

instance appears dangerous, even granting the general thesis of Brunner and others that the customary laws of all the early Germanic nations evidence a general cultural unity in things judicial for the greater part of northern Europe.

In the last analysis, the question is one which could only be settled by an exhaustive survey of the Anglo-Saxon literature. The only point here made is that the earliest Anglo-Saxon laws do not use the term *mord* or any equivalent and the later laws, all of which must have been to a degree under Danish influence, only speak of *mord* in a general connection and without adding details as to the imposition of a special penalty or the exaction of an increased *wergeld* in cases of secret homicide. And yet it would seem that details of precisely this character should have been inserted in the laws, if a distinction between secret and open homicide were recognized. See the references cited in the succeeding note.

[21] The references which the writer has been able to find are as follows:— to *apertum murdrum*, see *supra*, note 9; to *morthdaedum* or an equivalent, 2 AETHELSTAN, 6; EADWARD-GUTHRUM, 11; 5 AETHELRED, 25; 6 AETHELRED, 7 and 28, 3; CNUT, PROCLAMATION of 1020, 15; 2 CNUT, 4a, 5, 6; *cf.* BLASERAS INSCR. 1.

In these passages, "works of darkness" and other heinous moral offences such as witchcraft are prohibited. The passage in CNUT'S PROCLAMATION may perhaps be given in translation as an illustration of their general tenor.

"Further they (all bishops) also instruct us with all our means and might to seek in spirit the eternal, merciful God, to love and honor Him, and to keep from all evil, that is, from parricide, from secret murder, from blasphemy, from witchcraft and magic, from adultery, and from shedding of blood."

[22] 2 CNUT, 40.

[23] "Ita et una lege universum Anglie regnum regeretur." Consiliatio Cnuti pr. 2. *Cf.* 1 CNUT, 12, 15; II Cnut, 45 (3), 46, 48, 83; Pseudo-Cnut de Foresta 2.

It is of course unnecessary to add that this levelling of local customary laws

epoch as obscure as that of the Danish dynasty in England, it is a reed readily broken.[24]

On the other hand, the evidence which can be adduced to indicate the probability of Danish precedent for the murder fine is plausible but insufficient. It is plausible, for with the establishment of a somewhat settled government under Cnut, the Danes were faced with much the same problem later set to the Normans, the problem of dealing with the profound racial antipathy and the ardent love of liberty of a newly-conquered people.[25] What remedy would more readily suggest itself to

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was by no means accomplished by Cnut or his immediate successors nor even probably intended; the divergences between the Danelaw and the laws obtaining in other parts of England still persisted. See, for example, the LEGES EDWARDI CONFESSORIS, 34, in which an unsuccessful attempt of the Conqueror to apply the Danelaw generally throughout England is related. Whether this legend have historical foundation or not, the differences between the three laws of the pre-Norman period endured for long after the conquest in the form of local custom. It is, however, possible that the passages referred to in this note may have some bearing as indicating a centralizing policy on the part of Cnut. It is not impossible that the idea which was in later centuries to bear fruit in the common law was espoused by Cnut.

[24] Other arguments in favor of the above view are brought forward by 2 LIEBERMANN, *op. cit.*, 593, *sub voce* "Murdrum," (2). Thus Liebermann suggests that, if in 1042 there was a murder law protecting the Danes, it must have been repealed subsequently to 1066 by some act of which we have no trace. As to this the reply is simply, in the first place, that no considerable reliance can be set upon the non-existence so far as our knowledge is concerned of a statute from the reign of William I, the material concerning which is extremely fragmentary; and, in the second place, that as we have seen above the law of the Confessor was reënacted by the Conqueror but with certain precise alterations, of which the provisions as to murder formed a part. This would automatically repeal any earlier provisions.

Liebermann also points out that, if there had been previous Danish murder legislation, the *francigena* naturalized in England at the time of the conquest would probably not have been excluded from the benefit of the Norman law. ARTICULI WILLELMI I, 4. But it is by no means necessary that a supposed murder law of the Danes or of Edward the Confessor had been extended to foreigners generally. The possibility is also to be considered that it may have been more or less sporadically enforced in Anglo-Saxon times as occasion demanded.

The associated term, *Anglecheria*, notes Liebermann, is obviously of French derivation. But, as it will be attempted to be shown below, presentment of Englishry was probably a gloss upon the law of William I of perhaps 1100.

It does not appear to the writer that these considerations are at all conclusive one way or the other. The other arguments emphasized by Liebermann are stated in the text of the article.

[25] The evidence for this period is scanty and conjectural and we, therefore,

the men from the North, who in their past piratical descents upon England had made a practice of levying contributions upon town or district or kingdom,[26] than to apply a doctrine of communal responsibility, already familiar in the homeland,[27] to cases of treasonable homicide where the offender escaped justice? Apart from this we find something like a tradition that the *murdrum* was of Danish origin. The statement of the anonymous compiler of the *Leges Edwardi Confessoris*, ascribing the introduction of *murdra* to Cnut, is explicit and can scarcely be explained away, as Liebermann suggests,[28] as an attempt to throw the responsibility for an onerous law upon a Danish rather than a Norman king. At the least, unless it be demonstrably improbable, mistaken, or falsified, the statement of a writer in an age of memory as to occurrences even a century previous is entitled to some credence. And, in the present case there is some slight corroborative evidence from independent sources.[29] Besides this we should bear in mind the

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have to fight probabilities. But it does not seem that, even though it be admitted that Cnut's reign, for instance, was relatively peaceful as far as the relations between crown and common people were concerned, this argument is invalidated, as Liebermann and others propose. See MORRIS, THE FRANKPLEDGE SYSTEM, 30. We have sufficient evidence in the chronicles of bitter feelings between the Saxons and the Danes shortly previous to the time of Cnut: the famous massacre of the Danes by Aethelred was the immediate occasion, so the chronicles tell us, of the invasion by Sweyn which terminated by setting Cnut upon the throne of England. For a vivid account see GUILL. DE JUMIÈGES, GESTA NOR. DUC., lib. v, 6 ff.

And the argument here in question is somewhat two-edged, for certainly the establishment of peace by Cnut must have implied some considerable centralization of authority, — in conjunction with which the introduction of a system of communal responsibility would have been far from preposterous. See the next two notes.

[26] *Cf.* A. S. CHRONICLE, A. 994, 1002, 1007, 1013, 1016, 1018, 1040.

[27] See *infra*, note 34.

[28] "Murdra quidem inuenta fuerunt tempore Cnuti regis; qui post adquisitam terram et secum pacificatam, remisit domum exercitum suum precatu baronum de terra.

"Et ipsi fuerunt fideiussores erga regem, quod illi quos retineret in terra, firmam pacem haberent: ita quod, si quis de Anglis aliquem ipsorum interficeret, si non posset defendere se iudicio Dei, ferro uel aqua, fieret iusticia de eo; si autem aufugeret, solueretur, ut supra dictum est."

The passage is found in § 16 of the Leges. Some slight corroboration of this account will be found in A. S. CHRONICLE, A. 1018.

[29] Thus the TRÈS ANCIEN COUTUMIER gives as one of the *placita* pertaining

entries in Doomsday Book, to which our attention has long since been directed by Maitland, tending to show that prior to the Conquest there was in the Danelaw a recognized system of communal responsibility: each hundred in a county was held liable for a breach of the peace given under the king's hand or seal.[30] Again, the amount of the fine provided for in the Norman legislation, forty marks of silver to the king and six to the kin, cannot well be fitted in with the customary Anglo-Saxon penalties: but it suggests at once the forty marks of silver which, according to the Scandinavian laws, were the customary fine accruing to the king's right for the more serious breaches of a special peace.[31] Even if we accept Lehmann's view that the forty mark fine was not customary in Denmark until the end of the eleventh century,[32] there seems to be here a somewhat remarkable coincidence. The coincidence will appear the more striking if we couple with it the well-known bias of William the Conqueror for the Scandinavian laws [33] and the even more suggestive fact that in parts of Scandinavia a fine of forty marks was imposed upon the hundred in cases of

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to the sword of the Duke of Normandy "homicidium, sive clam factum fuerit, quod lingua Dacorum murdrum dicitur, sive palam." Cap. lxx.

And in the CHARTA HENRICI I CORONATI we read, "Murdra etiam retro ab illa die qua in regem coronatus fui omnia condono; et ea quae amodo facta fuerint iuste emendentur secundum lagam regis Eadwardi." § 9.

It is interesting to note in this connection that the Danish chronicler, Saxo, speaks of the forty mark fine as customary in Denmark at the time of Cnut, in a passage cited and criticized by LEHMANN, DER KÖNIGSFRIEDE DER NORDGERMANEN, 135 ff., but which has not otherwise been available to the writer.

Mention should also be made of a grant of freedom from "morchidis" and other burdens in a charter of 28 December 1065 and given to Westminster Abbey by Edward the Confessor. 2 RIC. DE CIRENCESTRIA, SPECULUM HIST., (R. S.), 238. There is of course the possibility that it is a forgery.

[30] F. W. Maitland, "The Criminal Liability of the Hundred," 7 LAW MAGAZINE, (4th series), 367 ff.

It is worth noting in addition to the suggestions of Maitland, that the £8 fine imposed upon each hundred for breach of the king's hand-peace corresponds to the 12 marks which was the precursor of the 40 mark fine in Scandinavia. See LEHMANN, DER KÖNIGSFRIEDE DER NORDGERMANEN, 54 ff., 239 ff.

[31] See VON BAR, A HISTORY OF CONTINENTAL CRIMINAL LAW, 132 ff. (translated from STEMANN, DEN DANSKE RETSHISTORIE).

[32] LEHMANN, *op. cit.*, 138 ff.

[33] *Cf. supra*, note 23.

secret homicide.[34] So that even if the Danes did not bring the *murdrum* to England in its exact later Norman form, the possibility of Scandinavian influence is not therefore excluded. In sum, the theory of the Danish origin of the murder fine is tantalizing but on the existing evidence we can scarcely do more than return the Scotch verdict, "Not proven."

From one point of view, it matters little whether or no William the Conqueror could avail himself of Danish precedent for the murder legislation. In any case it was a characteristic combination of recognized doctrines, — as was also indeed the system of frankpledge introduced by the same monarch for somewhat similar purposes of police.[35] The provisions in the *Articuli Willelmi I* show us that in effect the Conqueror was extending a special peace over his followers and the murder fine was in the last analysis the sufficient means of enforcement.[36] Significant enough, for the conception of the king's peace, however limited in scope was yet in pre-Norman times of increasing importance. It then extended not only to the king's person, to certain places, such as the *vicinia regis* and the king's highways, and to certain occasions, such as Christmas, Easter, and Whitsuntide, but also to certain offences and to certain persons. We have already noted the tendency illustrated in the laws of Cnut to bring a few of the more serious offences under royal control;[37] in addition, it was recognized that the king could extend a special peace, his "hand-grith," over such of his followers or officers as he

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[34] LEHMANN, *op. cit.*, 23, 57, 61.

Emphasis has been laid here upon the coincidence in the sum, forty marks. But, if Lehmann's criticisms of the accepted view as to the origin of the forty mark fine in Scandinavia be correct, it is not improbable that during the eleventh century for some obscure reason the earlier twelve mark fine was increased to forty. This, however, would scarcely lessen the plausibility of the suggestion made in the text. For the eight pounds imposed according to Doomsday upon the hundreds of a county in the Danelaw for breach of the king's special peace (*cf. supra*, note 30) would also be the amount laid in analogous cases according to the then Scandinavian laws. And the change in the amount would have taken place at about the same time in both Scandinavia and England.

[35] See MORRIS, *op. cit.*, 29 ff.

[36] For the text of these provisions, see *infra*, note 45.

[37] See *supra*, note 2.

desired to protect. Any breach thereof was "unemendable" and placed the offender at the king's mercy as to both property and life.[38] In the second place, the Anglo-Saxon king was the protector of those who were without the protection usually afforded by the kinship group, as well as of the poor,[39] and the widow.[40] Were a foreigner or a cleric brought into question concerning money or life, the king stood in stead of family and advocate:[41] if a bastard born without a family[42] or a foreigner were slain, to the king went a portion of the wergeld.[43] If we connect with these two doctrines the conception of communal responsibility for breaches of a peace specially given by the king, which as we have seen appears to have obtained in the Danelaw, we have substantially the essential ideas involved in the murder legislation. Its intent was to spread the special protection of the king's peace over those who were at once the king's retainers and strangers usually without family in England, the Norman followers of the Conqueror. Of the measure of success attained by that monarch's efforts to maintain his peace we may read in the chronicle, — "So great was the peace of the Conqueror, that a maid, laden with gold, could with impunity traverse the realm of England."[44]

We may now examine the rules governing the imposition of the murder fine. The essential principles are set forth in the *Articuli Willelmi I:* in case a follower of the Conqueror be found slain, his lord is to produce the murderer within five days or otherwise proceed to pay the sum of forty-six marks up to the extent of his substance, the hundred in which the murder took place being *communiter* liable for any deficit.[45] But this concise

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[38] 6 AETHELRED, 14; 1 CNUT, 2, 2.

[39] AELFRED, 1 (2, 3).

[40] 5 AETHLERED, 21; 6 AETHELRED, 26.

[41] EADWARD-GUTHRAM 12; 8 AETHELRED, 33–35; 2 CNUT, 40.

[42] INE, 27; AELFRED, 8, 3.

[43] INE, 23; AELFRED, 28.

[44] "Pacis tantus auctor erat, quod puella auro onusta regnum Angliae pertransire possit impune." JOH. DE OXENEDES, CHRONICA (R. S.), 35.

[45] "Uolo autem, ut omnes homines, quos mecum adduxi aut post me uenerunt, sint in pace mea et quiete. Et si quis de illis occisus fuerit, dominus eius habeat infra quinque dies homicidam eius, si potuerit; sin autem, incipiat persoluere mihi quadraginta sex marcas argenti, quamdiu substantia illius

statement must be supplemented by the analogous accounts given in the other law-books of the period, the *Leis Willelme,* the *Leges Henrici I,* and the *Leges Edwardi Confessoris.*[46]

A difficulty appears soon to have arisen with regard to the incidence of liability. The *Articuli* clearly hold, as we have seen, the lord to whom the Norman retainer has commended himself primarily responsible for his protection; but in one of the versions of the *Leis Willelme* the liability is said to rest upon the vicinage instead.[47] The *Leges Henrici* are more explicit: the liability falls not as in the *Articuli* according to the victim's *ligeance* but according to the place where the murdered body is discovered, the illicit removal of the body from the place where found being punishable as *ouerseunessa.* Thus, in case the body were found in a house, a court, or an enclosure, then everything in the manor *usque ad olera* is to be sold to raise the fine and the hundred will be liable only for a deficit; if in an open field, the hundred is immediately liable, as is also the case if the manor in which the body is discovered be of the king's *dominium* or *firma.*[48] The *Leges Edwardi Confessoris,* substantially repeating the foregoing, lay the primary responsibility on the vill but add that owing to the utter extinction of the vill the fine should be collected in the hundred and delivered to the king's exchequer under seal of one of the county barons, there to be reserved for a year.[49] The only offset to this

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domini perduraverit. Ubi uero substantia domini defecerit, totus hundredus, in quo occisio facta est, communiter persoluat quod remanet." § 3.

By section 4 the *francigena* who was naturalized in England in the time of Edward the Confessor was excluded from the benefit of the above provisions.

Attention should be given to the personal liability of the dominus here imposed, an unique provision with which the account given by the LEGES EDWARDI CONFESSORIS as to the origin of *murdra* (quoted in note 28) is entirely consistent.

[46] The dates assigned to these compilations by Liebermann are as follows: — the LEIS WILLELME 1090–1135; the LEGES HENRICI I, 1114–1118; the LEGES EDWARDI CONFESSORIS, 1130–1135. LIEBERMANN, *op. cit.*, 492, 641, 642.

[47] According to the Latin version, probably of later date than the French, the men of the "uisneto" are to apprehend the murderer or to pay: in the French version and the Pseudo-Ingulf this duty rests upon the men of the hundred. LEIS WL., 22.

[48] LEGES HENRICI, 91–92.

[49] LEGES EDWARDI CONFESSORIS, 15.

onerous burden provided by the laws is that if the culprit is known but eludes apprehension his goods can be taken by the hundred or his accomplices brought to justice.[50] There is recorded here some lost history: obviously the baron or lord, following the example set by his lord, the king, and perhaps by some unknown enactment, had by 1135 shifted the burdensome fine to the vill or hundred community, and there it rested until 1340. The personal liability was become "real."

Perhaps with the extension of the sphere of liability is to be connected the lengthening of the period of grace during which opportunity was given to apprehend the culprit. At any rate the five days appointed by the *Articuli* apparently first became seven,[51] and then a month and a day.[52] The *Leges Edwardi Confessoris* also provide that even after the payment of the fine, if within a year and a day the murderer were brought to justice, the fine was returnable.[53] Pending these days of grace, the hundred was to exhaust all means of discovering and arresting the offender [54] and, in addition, according to the *Leges Henrici* the hundredmen during the seven days were to keep vigil about the *corpus murdriti,* which was to be raised upon a platform and lighted by nocturnal fires.[55]

On the other hand, we notice a tendency to rigorous interpretation of the *lex murdrorum,* doubtless inspired by *favor scaccarii:* the hundred must be made to pay unless unavoidably absolved by the letter of the statute. One ground of exemption was the due rendition of the culprit to the king's justice. But he must not be beyond the vengeance of the king's court: if he could not be convicted; if he evaded punishment by dying a natural death; if he was slain or mutilated, save in course of arrest; if he was killed by the outraged kin of the victim exercising the ancient right of feud; even if he obtained the king's

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[50] LEGES HENRICI, 92, 4.

[51] LEGES HENRICI, 92, 3.

[52] LEGES EDWARDI CONFESSORIS, 15, 1.

[53] *Idem,* 15, 5.

[54] LEGES HENRICI, 92, 8a.

[55] *Idem,* 92, 8. That this duty of keeping watch was actually required appears from an unpublished charter of the early thirteenth century cited by STENTON, DOCUMENTS ILLUSTRATIVE OF THE SOCIAL AND ECONOMIC HISTORY OF THE DANELAW, p. cxxiii.

pardon or was delivered after the expiration of the brief period set by law: in all these cases the fine fell.[56] And of the forty-six marks, the amount of the fine set by statute, the king took the lion's share; only six marks went to assuage the feelings of the kindred or, if there were none, to reward the informer.[57] In the king's eyes, the murdered body must soon have been found something like a royal treasure-trove.

We may note in this connection the fate, as taught us by the *Leges Henrici,* of one charged with murder and delivered up by the hundred. The accused was given opportunity to clear himself by oath or ordeal; and the payment of the fine by the hundred was postponed to await the result. If he succeeded, the hundred had to pay; if he failed or confessed, the *Leges* provide with naïve irony that he was to be given over to the mercy of those to whom he had shown none, the victim's kin. If there were no kin, the king made his own justice.[58] In any event the convict or the confessed was in the king's mercy as to life, limb, and goods:[59] even if his life were spared by the king's pardon which saved the statute, he was required to abjure the realm.[60] The essential thing in this is the king's claim to jurisdiction.

We have seen that if the offender were duly rendered the murder fine was avoided. A second ground of exemption was necessarily inferred from the limited purpose of the *lex murdrorum:* it was primarily intended to defend only the foreign-born followers of the Conqueror. The *Articuli* excluded from its scope even the *francigena* who in Saxon times participated in scot and lot.[61] We have no reason to believe that for perhaps a generation after the Conquest any peculiar difficulty was experienced in distinguishing the alien-born. But when the old generation had begun to be assimilated and a new generation sprung from mixed marriages between Norman and Anglo-Saxon appeared, it was not always so simple to deter-

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[56] LEGES HENRICI, 92, 3.
[57] *Idem*, 91 and 91, 1a.
[58] *Idem*, 92, 9c and 92, 14–16; ASSIZE OF CLARENDON 2.
[59] *Idem*, 13, 2.
[60] LEGES EDWARDI CONFESSORIS, 18, 2.
[61] See *supra*, note 45.

mine whether the statute applied. Consequently, early in the reign of Henry I a set of rules as to proof of nationality became necessary. It was another opportunity to construe the statute in favor of the king's jurisdiction and his purse. The law, therefore, presumed the murdered victim to be *francigena,* unless shown to be English on the paternal side.[62] And this, as Richard Fitz-Nigel plausibly informs us, was a gloss upon the statute,[63] introduced probably little later than 1100. Thus by shifting the burden of proof to the taxable community was the road opened to a wide royal jurisdiction over secret homicide. To rebut the presumption of Normanry, the so-called presentment of Englishry might be given.[64] This could be effected, according to the *Leges Henrici,* by the oath of twelve of the better men of the hundred; though scant details are given, an alternative method of proof by one who could show

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[62] "Non procedit nec soluatur murdro Anglicus, set Francigena; ex quo uero deest qui interfectum hominem comprobet Anglicum esse, Francigena reputatur." LEGES HENRICI, 92, 6 and *cf.* 75, 7.

[63] DIAL. SCACC., lib. I, x.

[64] It is curious to note some of the protean changes which the word "Englishry" has suffered. In the Latin the normal form is "Englescheria." (1 MAITLAND, SEL. PL. CR. 82, 84, 86, 98; 2 PALGRAVE, Eng. Com., cxxiii; TURNER, SEL. PL. FOR., 19; 2 TWISS, BRACTON, 390.) Almost as common is "Englecheria" (GROSS, COR. ROLLS, xliv, 4, 13, 26) while "Englesheria" 1 MAITLAND, *op. cit.,* 117; 7 COKE, 16b) and "Anglescheria" (FLETA, lib. I, c. 30) are more rare. The form "Englescherie" which is also used in Latin documents (1 MAITLAND, *op. cit.,* 25; 2 RILEY, MUN. GIL. LON., pt. I, 367, 369) seems to be an interpolated French spelling, as also "Anglescherie" an unusual creation. (15 E. H. R., 307.) In the French, "Englescherie" seems to be the normal form (4 HOUARD, TRAITÉ, 15 27; WHITTAKER, MIR. JUS., 35, 158; STAT. R. 282) although "Englecherye" is also found (HORWOOD, YEARBK. ED. I, 241).

In English, "Englishry" is the present spelling, though at the end of the eighteenth century "Englishery" was employed. (CRABB, HIST. E. L. 49; 1 HALE, HIST. PL. CR. 447.) But "Englescherie" (4 BLACKST. 195; 1 STAT. R. 282) "Engleschyre" (1 SELDEN, TRACTS, 44) "Engleshere" (7 COKE, 16b) "Engleschire" (1 HAWKINS, PL. CR. 78) "Engleschery" (5 LYTTLETON, HIST. HEN. II, 294) are also available. It remained for Crabb to produce three unique variations, "Englisherie," "Englisheirie" and "Englishirie" (HIST. ENG. L., 293) "Englecherie" is also found. (2 LIEBERMANN, *op. cit.,* pt. I, 63.) 3 OXFORD DICTIONARY, 280, provides seven other possibilities.

And, finally, when in 1284 the law of Wales was codified on the English model, the term "Walescheria" was coined to meet the occasion (1 STAT. R. 56, 58).

that the slain was English seems to have been contemplated.[65] As we shall see, these rules were worked out in much greater detail in the succeeding century. We gather from the foregoing that when the *Leges Henrici* were being compiled, the rules as to presentment of Englishry were in their infancy. Not only so, but that the original design of the *lex murdrorum* had by then largely, if not entirely, vanished; for the same conditions which made necessary presentment of Englishry also argued that the Norman no longer needed special protection. But the statute was by no means repealed; henceforth it was to serve as an instrument for the extension of the king's jurisdiction and the replenishment of his purse. Henry I might at his coronation grant amnesty for past *murdra* but the statute must be kept for the future.[66]

Though the evidence for the latter portion of the twelfth century is fugitive, the effect of this policy is sufficiently clear. Before the end of the twelfth century a sudden and fundamental transition takes place in the law with regard to homicide. By the time of Glanvil, as we may gather from the succinct statements in the *Tractatus*,[67] the primitive barbarous scheme by which the slayer can buy off the victim's kin at the price set by a fixed tariff has given way before the king's justice. The kinsman may prosecute his suit of outlawry in the county court or his appeal before the king's officer, but an elaborate system of presentments has brought all cases of unnatural death within the purview of the royal justices and the king takes the profits. Homicide is a breach of the king's peace, a felony, for which someone must be made to pay, the offender, the tithing, or, under the murder law, the community. So much is obvious, but to explain the event in detail is to raise questions of no little difficulty.

No one-sided explanation will do. The king's peace of 1100, limited though it was to particular cases, was an idea big with possibility, if adequate machinery were set behind it. And the recent improvements in the system of frankpledge, as well as the murder law, were an important step in this

[65] LEGES HENRICI, 75, 6b and 92, 11.

[66] See *supra*, note 29.

[67] Lib. 14, cap. 3.

direction. From another point of view, the probability of ecclesiastical influence may not be evaded; the compiler of the *Leges Henrici* is as evidently occupied with canonical distinctions of homicide as is Bracton in a later day.[68] For homicide was mortal sin even before it was secular crime and the church had claim to enforce punishment by the discipline of penance.[69] In the present connection, however, with more particular reference to the part played by the *lex murdrorum* in preparing the extension of the king's justice to homicide, it is proposed that the crucial step was taken in 1166 by the Assize of Clarendon and that the reservation in that act of jurisdiction over *murdratores* to the royal justices, whether or not it was so explicitly intended, also of necessity reached to all cases of homicide. Further, it is suggested that the murder law supplied a significant means, as well as a source of jurisdiction, by which the central authority was enabled to break down the system of private compositions for homicide.

We have in general to start with a situation at the commencement of the twelfth century in which the old Anglo-Saxon rules as to homicide are still in operation. If we turn to *Leges Henrici* which purport to describe the "confused multitude" of laws in force at about 1115, we shall find that homicide has not yet been raised to the technical dignity of a "crime"; it is still contemplated that manslaughter shall ordinarily be remedied by *wer* and *bot*.[70] But in cases falling within an important series of exceptions, all this is altered: in specific instances the king will assert his right, whether it be by reason of the place or the time at which the homicide occurs or on account of the person of the victim.[71] "Infraccio pacis regie per manum uel breue date; de famulis suis ubicunque occisis uel iniuratis; utlagaria, murdrum," these amongst others are offences which place a man in the king's mercy and in which the king claims an exclusive interest.[72]

[68] LEGES HENRICI, 72.

[69] *E. g., id.*, 73, 5.

[70] *Idem*, 68 ff. It is interesting to note a survival of this situation until 1221 in Herefordshire. 3 BRACTON'S NOTEBOOK, 407. See also MAITLAND, PL. CR. GLOUC., pl. 101.

[71] LEGES HENRICI, 68, 2.

[72] *Idem*, 10, 1 and 13.

Of these it is perhaps the *murdrum* which is making the most extensive inroads upon the principle that homicide is no public offence. In the course of its administration not only is the murder law applicable to an increasing number of cases of homicide but, if our thesis be correct, it is eventually to be generalized so as to cover all cases of unexplained death.

Thus, on the one hand, the exceptional protection afforded the Conqueror's man by the *Articuli Willelmi I* is accorded to the *francigena,*[73] to the *transmarinus,*[74] to the one who cannot be proved of English birth,[75] to every man:[76] before the end of the twelfth century it has become the rule, save in the narrowing set of cases where Englishry is duly presented to the satisfaction of the royal official. "Consequently," writes Richard Fitz-Nigel, "in the case of nearly every one who is today thus found slain, penalty is inflicted as for *murdrum,* unless there are obvious *indicia* of servile condition."[77]

On the other hand, an even more important development was rendered possible in 1166, when the administration of the more important pleas of the crown was placed under the supervision of the royal justices. The Assize of Clarendon of that year "for the preservation of peace and the maintenance of justice" ordered presentments to be made in the county and hundred courts before the justices and sheriffs of such as had been appealed or accused (*publicatus*), for robbery, theft, murder, or the harboring of those guilty thereof. The presentments were to be made, it will be recalled, by the famous inquest of "*xii legaliores homines de hundredo*" and "*iv legaliores homines de qualibet villata.*" The Assize further directed that individuals so presented should be brought by the sheriff before the justices to make their law; the king alone in his court "coram Justitiis" was to have jurisdiction over them or to be entitled to their chattels.[78] Ten years later,

[73] LEIS WILLELME, 22.

[74] LEGES HENRICI, 91.

[75] *Idem*, 92, 6.

[76] LEGES EDWARDI CONFESSORIS, 15. Though this is probably exaggerated for its time, nevertheless it indicates a tendency to generalize the *murdrum* into homicide.

[77] DIAL. SCACC., *loc. cit.*

[78] The Assize of Clarendon will be found in STUBBS, SELECT CHARTERS, 143 ff.

in 1176, the Assize of Clarendon was reaffirmed by the Assize of Northampton; the rigor of the king's justice was increased; the list of felonies was almost doubled; and, even more significantly, the door was apparently left open for judicial legislation in the matter of crown pleas, if indeed that had not already taken place, — the man accused of "murder" and the man charged with "alia turpi felonia" were to be equally served by the king's justice.[79]

The import of this legislation is obvious. King Henry, dissatisfied with the previously existing agencies for preserving the peace and enforcing his rights, by these Assizes superimposed upon them a new process of criminal justice over which the king alone was to have control. Criminals presented by the royal inquest were the king's peculiar offenders, whilst those otherwise accused were to be judged as had before been accustomed.[80] The result, as far as the jurisdiction over the *murdrator* is concerned, is also obvious. Within twenty years the royal justices were exercising a general jurisdiction over homicide. For with Glanvil the tale was complete: homicide had become a plea of the crown and murder was distinguished from simple homicide only by its secret perpetration.[81] It was the triumph of the king's justices and of the king's peace over the group of kindred. These were left with the appeal which was not only limited to the nearest relatives by blood or tenure but also, as we learn from Bracton, in time became a process almost as dangerous to the appellor as to the appellee.[82]

As intimated above, the chief difficulty as to the effect of this legislation arises over the transition from *murdrum* to homicide and from the use of the term *murdrator* in the Assizes.

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[79] Sections 1 and 3. STUBBS, *op. cit.*, p. 150 ff.

[80] ASSIZE OF CLARENDON, 5, 12, 14.

[81] "Duo autem sunt genera homicidii, unum est, quod dicitur Murdrum, quod nullo vidente nullo sciente clam perpetratur, praeter solum interfectorem et eius complices, ita quod mox non assequatur clamor popularis iuxta Assisam super hoc proditam." TRACTATUS, lib. 14, cap. 3. This work attributed to Glanvil was probably written about 1188.

It should also be noted that the appeal for murder was limited to a narrower class of persons than the appeal for homicide. *Loc. cit.*

[82] The defeated appellor is sent to gaol, and if he retracts, in addition his sureties are amerced. BRACTON, DE LEG., fol. 142.

In the first place, it is possible, despite the retention of the idea by Glanvil and Bracton and other later writers, that the term, *murdrum,* is not to be read in the Assizes with too definite a connotation of secrecy. The *Articuli Willelmi I,* as we have seen,[83] did not impose the murder fine for *murdrum* but for *occisio.* And the *Leges Henrici* had given a definition which slighted the implication of secrecy; it was *murdrum* if the malefactor were not delivered within the week.[84] However this may be, it is here suggested that even if the Assizes did not explicitly extend the royal jurisdiction to homicide, they did so implicitly. For if, as seems incontrovertible in view of the later practice, the assignment to the justices of jurisdiction over the *murdrator* carried with it a general supervision over the enforcement of the *lex murdrorum,* an irresistible temptation, if not a necessity, was created for the same justices to extend that jurisdiction to homicide generally. In cases of homicide, if the offender were unknown, the murder fine would be collectible in the great majority of instances owing to the difficulty of presenting Englishry within the prescribed time and form; if the offender were known but eluded capture for a brief period the result was the same. If he were appealed, he might still be tried as if a presentment had taken place. If he were outlawed, the king claimed his body and goods. Even if he were a mere fugitive, his chattels went to the king and the tithing was amerced. We may well believe that in the case of a private composition for homicide, a royal justice intent upon enforcing the rights of his royal master would give short shrift to a plea of private composition. If this be the case, it would appear that the Assize of Northampton by referring to the "alia aliqua felonia"[85] was slyly conniving at a development which was already in progress. To be sure we can scarcely do more than raise a probability as to the time and the path of the transition; we are still in the twilight-zone of English legal history. But the very earliest rolls in the *Curia Regis* which

[83] See *supra,* note 45.

[84] "Murdritus homo dicebatur antiquitus cuius interfector nesciebatur, ubicunque uel quomodocunque esset inuentus; nunc adiectum est; licet sciatur, quis murdrum fecerit, si non habeatur intra VII dies." Sec. 92, 5.

[85] Sec. 3. STUBBS, *op. cit.,* 151.

have been preserved to us[86] confirm the result and also provide an apocryphal vindication of Glanvil's statements as to homicide. We may also read at large in these rolls and in the Pipe Rolls covering the reign of Henry II of the frequency with which the murder fine was collected. The latter, indeed, somewhat reticently suggest that the law of Glanvil on this subject was the law which had been in force for some years before 1188. We have to remember that during the twelfth century the king was making good business of his justice and that his mercy was heavy with amercements. And the good justice was he who multiplied the occasions for the king's mercy.

We have proposed that the great service of the murder law was to point the way to the crown plea of homicide. But as soon as this had been effected and *murdrum* had been subsumed under homicide, it is evident that the *lex murdrorum* had become something of an anomaly in the system of criminal justice, except in so far as the murder fine gave point to the police duties of the local community and incidentally was used as a rather arbitrary means of taxation. In a time when the distinction between Angle and Norman had all but been obliterated,[87] it was clear that the original purpose of protecting the Normans had passed, leaving behind in the rules as to presentment of Englishry an arbitrary and invidious stigma upon

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[86] MAITLAND, THREE ROLLS OF THE KING'S COURT IN THE REIGN OF KING RICHARD THE FIRST (1891); PALGRAVE, ROTULI CURIAE REGIS, 1835, 2 vol., *passim*. See also MAITLAND, PL. CR. GLOUC. (1884).

[87] *Supra*, note 77. The chief authority for the proposition that by the end of the reign of Henry II, the distinction between Norman and Englishman was rapidly disappearing, is the passage there cited in the DIAL. DE SCACC. Pike, however, in 1 HISTORY OF CRIME, 453–455, argues from the rules as to presentment of Englishry then and later enforced that the English were for some time after 1179 to remain in a status of inferiority and attempts to discredit the statement in the DIALOGUS by showing that the amount of the murder fine is incorrectly given as xxxvi or xliv pounds instead of xlvi marks, the amount stated in the earlier laws.

It seems doubtful to the writer whether Pike's argument can as a general statement be accepted in the face of the express opinion in the DIALOGUS. As shall be indicated below, the subsequent elaboration of the presentment of Englishry is most probably to be attributed to an inclination to avoid the payment of an arbitrary fine whenever possible. And, as shall also be pointed out below, the amount of the fine stated in the laws was purely conventional: the Pipe Rolls even of Henry I show that the amount collected was only a

those of English birth. Nor was a differentiation between homicides according to whether the offender were known or apprehended within a brief period quite rational; certainly, it did not fit in with the canon law distinctions of homicide already exercising the minds of lawyers. Further, in a large number of instances, particularly where the death was due to accident, the imposition of the murder fine was a scarcely disguised hardship. Even as early as 1100, as we have seen,[88] it had been obliquely recognized as an abuse by Henry I. It is, therefore, no matter for surprise that in one way or another, by custom or by interpretation or by statute, the application of the murder fine was in later days to be restricted or mitigated until its final abolition took place. We may conveniently summarize the history of the murder law in its latter days from this point of view.

In the first place, the amount of the murder fine actually collected was at an early date very remarkably lessened. That the sum of the fine was at first set at forty-six marks, the early laws are agreed.[89] And that of this sum six marks were to go to the kindred, the *Leges Henrici* tell us in addition.[90] But we have no evidence aside from these provisions either that this large sum was ever collected or that the royal officials allowed any part of the sums actually collected to the kin. The amounts of the *murdra* given in the sole Pipe Roll surviving from the reign of Henry I vary from fifteen to one hundred shillings.[91] And in the reign of Henry II, for which we have much more complete evidence in the rolls published

fraction of the forty-six marks. A discrepancy as to the theoretical amount was, therefore, of little importance, nor does it appear sufficient to undermine express testimony on a question as to which the writer of the DIALOGUS must have been informed.

But see also PIKE, YEAR BOOKS 14–15 EDW. III, xviii, note 1.

[88] *Supra*, note 14.

[89] ARTICULI WILLELMI I, 3; LEIS WILLELME, 22, (47 according to the Pseudo-Ingulf and the Latin version); LEGES HENRICI PRIMI, 13, 2 and 91; LEGES EDWARDI CONFESSORIS, 15, 2 and 15, 7.

[90] Sec. 91.

[91] 1 PIKE, HISTORY OF CRIME, 453–454. This roll from 31 Henry I has been edited by Joseph Hunter and published by the Record Commission but it has not been available to the writer. According to Hughes, Crump and Johnson, editors of the DIAL. DE SCACC. 194, the amounts range from seven to twenty marks.

by the Pipe Roll Society, the amounts set range arbitrarily, as far as a casual examination would indicate, from five-pence [92] to as much as eighteen pounds and over [93] per fine, the average certainly being less than five pounds. From the fact that the amounts fluctuate widely, we are to infer, as Madox has suggested,[94] that they were more or less arbitrarily determined in each particular case by what the traffic would bear. During the twelfth century the assessment of the fine was in the hands of the royal officials, the sheriff or later the itinerant justices; from the circumstance that the amercements are grouped together in the rolls of the *Curia Regis* after the records of the pleas to which they relate,[95] it seems probable that the assessment took place at the end of the eyre. After Magna Charta the amounts of these and other amercements were to be determined according to the "sacramentum proborum hominum de uisneto" or in the case of the barons "per pares suos." [96] To this discrepancy between law and practice as to the amount of the fine is to be referred the otherwise inexplicable silence of later wrtiers, of Glanvil, Britton, Fleta, Horne, as to the sum, as well as the curious mistake of lxvi marks for xlvi made by the transcriber of Bracton even though, as Hale notes, it be a manuscript error.[97] The statement in the *Dialogus de Scaccario* is illuminating; the writer of this valuable dialogue, admitting that the amount may vary according to "the diversity of places and the frequency of homicide," nevertheless, gives two alternative amounts, thirty-six or forty-four pounds, neither of which can be reconciled with those elsewhere stated.[98] The truth is that long before the time of Bracton or even of Richard Fitz-Nigel the law in the books as to this point had ceased to be the law in action.

And the reason therefor is not far to seek. Whatever justi-

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[92] PIPE ROLL 32 HENRY II, 4.

[93] PIPE ROLL 5 HENRY II, 5. 18 pounds, 6 shillings, and 8 pence fine from four hundreds.

[94] 1 HISTORY OF THE EXCHEQUER, 526 ff. (edition 1769).

[95] *Cf. passim* the editions of the various rolls referred to in note 86.

[96] MAGNA CHARTA, cap. 14.

[97] BRACTON, DE LEGIBUS, fol. 134b. *Cf.*, 1 HALE, PLAC. COR., 447 note.

[98] DIAL. SCACC., *loc. cit.*

fication there may have been in the course of military conquest to demand an extraordinary contribution of forty-six marks per *murdrum,* it was preposterous to lay a fine of that amount for the mere failure by a community to prevent a clandestine murder, and that in the ordinary course of justice. What is more, it was a sum greater than could be collected in a day when murders were fully as frequent as they are at present and *murdra* were perhaps the most numerous pleas of the crown.[99] And forty-six marks, the equivalent of some six hundred odd shillings, was a crushing penalty to pay, even for a community, in a time when there was scarce a fugitive whose *catalla* were assessed in the Pipe Roll at as much as ten shillings,[100] when all the moveables in a vill might be valued at as little as fourteen shillings.[101] In those days two sheep went for a shilling; an ox was worth from two to four shillings; a horse from four to twenty.[102] Small wonder that the amount of the murder fine originally set by statute was found exorbitant, even by the royal officials.

In the second place, large parts of England were exempt from the burden of the murder fine. There was no presumption that it could be imposed and collected throughout the land. Even in the twelfth century, liability to *murdra* seems to have been regarded as a feudal incident, similar to other exactions of service or money.[103] Consequently, the king's right might be remitted by the office of the tenant, by grant, or by prescription evidenced by the custom of a county. Thus, in the first instance, lands of the king's demesne were exempt, probably

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[99] For a rather exaggerated illustration, see PIPE ROLL 32 HENRY II, p. 14, where out of fifteen pleas (placitis), seven record the imposition of a murder fine.

[100] The Assize of Clarendon, § 18, had provided that the chattels of fugitives were to be seized "ad opus regis."

[101] 1 SELECT PLEAS OF CROWN, pl. 2.

[102] See for illustration LEIS WILLELME, 9, 1; LEGES HENRICI, 76, 7; PIPE ROLL 32 HENRY II, p. 141.

[103] Thus in the DIAL. DE SCACC., the *murdrum* is classed with the Danegeld and with scutage. Lib. I, cap. viii. And in the charters of the twelfth century it is commonly classified with other feudal burdens, in cases where there are grants of immunities. See for illustration F. M. STENTON, DOCUMENTS ILLUSTRATIVE OF THE SOCIAL AND ECONOMIC HISTORY OF THE DANELAW, nos., 1,156, 186, 190, 245, etc.

by an extension of the old rule stated in the *Leges Henrici* to the effect that by the king's direction a *murdrum* discovered within a manor of the king's ferm was to be compounded for by the entire hundred.[104] And lands holden of the queen enjoyed a similar liberty.[105] The same principle exempted ecclesiastical fees and, according to Madox,[106] the lands of the clergy and religious. So too, the barons or other "residents" of the royal exchequer were exempt from the common amercements by the privilege attending their connection with the exchequer.[107] In cases such as these, it does not necessarily follow that the sub-tenants were relieved; there was more than a chance that the privileged official would pocket the profits which otherwise belonged to the king. Again, exemption from the *murdrum* as from other feudal burdens was extensively granted by charters. The *Leges Henrici* made provision for the possibility of a liberty of this kind; a baron who was surety for the payment of a murder fine imposed upon a hundred was accountable for the entire sum *sine calumnia* but, if he could and would, he was permitted to collect it in the hundred saving his manor.[108] This practice was later regularized: the fine was either collected from the hundred *exceptis libertatibus* or in some instances the barons were by virtue of a grant entitled to claim the amercements collected in their manors at the exchequer.[109] Similarly, cities might hold charters of exemption, as did London,[110] Worcester,[111] and Gloucester.[112] Finally,

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[104] LEGES HENRICI, 91, 3; 1 MADOX, *op. cit.*, 539; SEL. PL. CR., 82, 84, 131; MAITLAND, PL. CR. GLOUC., pl. 183. But *cf.* the case where a murder fine was imposed for a murder arising within the royal forest, the justices giving as their explanation, "quia lex terre non debet deleri." TURNER, SEL. PL. FOR., 19.

[105] MADOX, *loc. cit.*

[106] *Ibid.*

[107] DIAL. SCACC., *loc. cit.*; 2 MADOX, *op. cit.*, 20 ff.

[108] LEGES HENRICI, 92, 17; 1 MADOX, *op. cit.*, 540. *Cf.* LEGES EDW. CONF., 15, 4.

[109] 1 LIEBERMANN, *op. cit.*, 609, note b; MADOX, *loc. cit.* Instances of *murdra* imposed "exceptis libertatibus" will be found in the Pipe Rolls *passim*.

[110] HENRICI I, CHARTA LONDONIENSIBUS CONCESSA, 2, 1 (in 1 LIEBERMANN *op. cit.* 525); 2 RILEY, MUN. GILDH. LON., pt. i, 367 ff.; RILEY, LIBER ALBUS, 115, 116, 117, etc.

[111] 2 PALGRAVE, RISE AND PROGRESS, cxxiii, note 32.

[112] MAITLAND, PL. CR. GLOUC. pl. 450.

there is sufficient evidence to show that entire counties lying in the north and west of England were free from the murder fine. Thus, the portion of Gloucester west of the Severn,[113] Shropshire,[114] Westmoreland, Yorkshire,[115] and Cornwall[116] were exempt, and probably Northumbria as well, as we are to infer from the circumstance that the Assize Rolls of Northumbria published by the Surtees Society record neither *murdrum* nor presentment of Englishry.[117] On the other hand, when after the conquest of Wales the common law of England was extended to Welsh territory, a presentment of Welshery in cases of murder was required before both coroner and sheriff.[118] It would lead us too far afield to examine this point in detail, as Morris has so excellently done with regard to the frankpledge;[119] the geographical distribution of the *murdrum* is scarcely a matter of prime importance to general legal history. It seems probable, however, that as in the case of the frankpledge the murder fine was not extended as a rule to portions of England which had not been brought fully under Norman control within a short period after the Conquest. That the murder fine was regarded in 1284 by inference from the *Statutum Walliae* as part of the common law of England scarcely disturbs the question. Long before the reign of Edward I each county was permitted to declare its particular customs before the justices in eyre. The claim of the knights, sergeants, and stewards of chief lords in Kent, as recounted in the yearbook of 5 Edward II, that there was no Englishry presented in their county, a claim belied by the rolls of a previous eyre, suggests what might have occurred if the murder fine had never before been imposed in a county or if the records of previous *itinera* had not been at hand.[120] The king's right in these cases was atrophied by the custom of the county.

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[113] MAITLAND, *op. cit.*, xxx, pl. 98 and 105, 289, 315; HEALEY, SOMERSET PLEAS, lxxviii.

[114] PALGRAVE, *loc. cit.*; MORRIS, FRANKPLEDGE SYSTEM, 51; HEALEY, *op. cit.*, lxxix.

[115] MORRIS, *op. cit.*, 52, 53; HEALEY, *op. cit.*, lxxx.

[116] HORWOOD, YEARBOOKS 30 AND 31 EDW. I, 241; HEALEY, *op. cit.*, lxxvii.

[117] Vol. 88.

[118] 1 STAT. R., 56, 58 (12 EDW. I).

[119] *Op. cit.*, ch. ii, 42 ff. Distribution of Frankpledge.

[120] 24 SELDEN SOCIETY, 11–12, 19, 52.

In the third place, the presentment of Englishry was by the middle of the thirteenth century given precise definition and facilitated. The *Leges Henrici* were ambiguous as to the method of presentment; it was to be made either by the oath of the twelve better men of the hundred or by the ordeal of hot iron or otherwise according to circumstances.[121] In the result questions as to how the presentment should be made were decided by the custom of the county.[122] Bracton summarizes for us some of the customs which thus arose:[123] proof of English birth could variously be given in different counties (1) by two males from the father's side and two females from the mother's,[124] (2) by one of the nearer parents from either side,[125] (3) if a male, by a male from the father's side and a female from the mother's and, if a female, by two females from either the father's or the mother's side.[126] The second of these was the most usual; as such, it was prescribed for the Welsh by the *Statutum Walliae*.[127] In Gloucestershire and Wiltshire the presentment was to be made by two from the side of the father and by one from that of the mother.[128] Fleta speaks of an even more liberal rule as to presentment of Englishry: that it might be made in some instances by one female from the mother's side only.[129] One would be inclined to conjecture that Fleta has in mind the case of an illegitimate, since the earlier principle had been that Englishry was to be shown *ex parte patris*. In case of doubt,

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[121] Sec. 92, 11 and 75, 6b.

[122] For illustration see the "customs" as to presentment of Englishry in some twenty-four counties extended from the eyre rolls in HEALEY, *op. cit.*, lxxvii–lxxx.

[123] BRACTON, *op. cit.*, fol. 135.

[124] In four counties, Devonshire, Dorsetshire, Somersetshire, and Kent, presentments were made by two from the father's side and two from the mother's but apparently without limitation as to sex. HEALEY, *loc. cit.*

[125] Thus, in some twelve counties, Bedfordshire, Berkshire, Essex, Hampshire, Herefordshire, Northamptonshire, Oxfordshire, Suffolk, Sussex, Worcestershire, Warwick (but according to other statements there was in Warwick no Englishry "et ideo murdrum"), Middlesex (or in default of parents on one side, by two from either the father's or the mother's side). HEALEY, *loc. cit.*

[126] *Cf.* the custom in Middlesex, referred to in the preceding note.

[127] 1 STAT. R., 58 (12 Edw. I). *Cf.* note 125.

[128] MAITLAND, PL. CR. GLOUC., pl. 1; HEALEY, *op. cit.*, lxxviii, lxxx.

[129] Lib. I, cap. xxx. For cases of 1221 in which this rule was rejected in Gloucestershire, see MAITLAND, PL. CR. GLOUC., pl. 119, 223.

as Bracton tells us, the "county" was to decide whether the slain person was of English birth or not and whether parents had properly been produced.[130] The presentments were of course first to be made before the coroners during the thirteenth century: if there appeared at the subsequent hearing before the itinerant justices any variation in the presentment or any violation of the custom of the county, Englishry was improperly presented and the judgment was *murdrum*.[131] Apparently also, there were means by which the hundred could compel the presentment to be made.[132] In two or three counties, it should be added, the customs had terminated in a regrettable conclusion: no provision was made for presentment of Englishry and yet the murder fine was exacted.[133] But despite this occasional severity and the insistence upon formal consistency typical of strict law, it seems probable that presentment of Englishry was in general facilitated by its customary definition. If so, the burden of the murder law was in so far indirectly alleviated.

In the fourth place, moreover, an even more significant development in the same direction was taking place through the introduction of new grounds of exemption from the murder fine, which were to a greater or less extent recognized by custom and law. We have already seen that in the earlier laws there were two, the rendition of the murderer within the statutory period,[134] and the due presentment of Englishry. To these at a later date other grounds were added. For example, there are indications pointing to the vague and partial acceptance of the idea that the murder law should apply only to the case of the unnatural death of a freeman. Thus, according to the *Dialogus de Scaccario* no penalty was imposed if the mur-

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[130] BRACTON, *loc. cit.* *Cf.* the rule in the LEGES HENRICI, *supra*, note 121.

[131] BRACTON, *loc. cit.*

[132] *Cf.* PALGRAVE, ROTULI CURIAE REGIS, I, 209.

[133] Leicestershire, Lincolnshire (but no *murdrum* in case of female victims), and possibly Warwick. HEALEY, *op. cit.*, lxxviii–lxxix.

[134] It is possible that this ground of exemption was not always respected in practice. See for illustration, HEALEY, *op. cit.*, lix, and reference there given; MAITLAND, PL. CR. GLOUC., pl. 21 (offender "per aliud factum suspensus fuit"), 121, 135. The explanation may possibly be that the malefactor was not captured in time. *Cf.* MAITLAND, *op. cit.*, pl. 174, 219.

dered victim were obviously of servile status,[135] a rule which would have covered a large number of cases. Similarly, in a few counties there was no presentment of Englishry and by implication no *murdrum*[136] in the case of infanticide;[137] in a larger number of instances there was none in the case of women slain.[138]

Again, we may notice the important distinction which was being made between murder by *felonia* and murder by *infortunium*[139] and the liberalizing tendency which was at work upon both these heads. On the one hand, the principle was developing in specific instances that there was no *murdrum* if in some way or other the felon could be held responsible for his murderous act. We cannot hope in the absence of adequate records to trace the origin of this doctrine: it may, however, be suggested that in the *Rotuli Curiae Regis* of the reigns of Richard I and John there are apparently cases in which after appeal brought or judgment of outlawry there was no murder fine laid, although no other ground of exemption is indicated.[140] It would, however, be dangerous to place reliance upon the negative evidence afforded by these instances, which in the light of other entries in the same rolls appear to have been exceptional and for which there may have been undisclosed explanation. Suffice it to say that the principle that if responsibility for homicide could effectively be imputed to some individual the hundred was not liable to the fine, was

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[135] *Supra*, note 77.

[136] *Cf.* HEALEY, *op. cit.*, lxi.

[137] Essex (under three years); Devonshire (under seven years); Dorsetshire, Hampshire, Northamptonshire, and Worcestershire (under twelve years), Berkshire (in case of females under twelve years only but this is doubtful); Wiltshire? (under fifteen years). See HEALEY, *op. cit.*, lxxvii–lxxx; MAITLAND, THREE ROLLS OF RICHARD I (Pipe Roll Soc., vol. 14) 98.

[138] Bedfordshire, Berkshire (if under twelve years but there is some question about this county) Devonshire, Dorsetshire, Essex, Hampshire(?), Lincolnshire (no custom of presentment), Oxfordshire, Somersetshire, and Worcestershire. HEALEY, *loc. cit.*

[139] See the passages quoted in HEALEY, *loc. cit.*

[140] MAITLAND, THREE ROLLS OF RICHARD I, (Pipe Roll Society, vol. 14), 86, 87, 89, 93, 94, 107. PALGRAVE, ROTULI CURIAE REGIS, I, 161, 162, 163, 204. See also MAITLAND, PL. CR. GLOUC., pl. 23, 36 (Englishry falsely presented), 45, 46, 53, 57, 58, 60, 61, 86, 109, 213, 275, 290, 404, 413. In a few of these latter cases the victim was probably a villein.

in particular cases accepted by Bracton. Thus, according to Bracton, the *patria* is excused from the murder fine, (1) if the murderer is known, since then, even if he be not captured, the felony can be proved by suit or by inquest and the malefactor outlawed, (2) *a fortiori,* if the murderer is captured and suffers judgment, since then the felony is proved, (3) if the victim lives long enough to disclose his assailants and his English birth, or (4) if any one has fled for sanctuary on account of the murder and there confessed.[141] According to the Mirrour of Justices, the same rule applies to the case of the *felo de se.*[142] In other words the fine would not fall upon the hundred, unless the king was defeated of his vengeance and his chattels because the felony could not be brought home to the malefactor. But even to this Britton admits an exception in the case of *murdra* occurring as the result of brawls between two or more, totally unknown in the district or alien.[143] And there are hints that a state of civil war might excuse the non-presentment of Englishry.[144] The pressure of the murder fine was inducing a more rational theory of communal responsibility.

We may see the same influences at work in the reception of another and even more illuminating doctrine, the doctrine that death by misadventure is no *murdrum.* Here too the origins are obscure, but in the county "customs" of the early thirteenth century there are occasional indications which presage the development which was shortly to take place. According to evidence more or less cogent, the judgment in cases of misadventure at this time was *infortunium* and not *murdrum* in Buckinghamshire,[145] Gloucestershire,[146] Worcestershire,[147] Warwickshire,[148] by grant of the king in Dorsetshire,[149] and in Devonshire in the

[141] BRACTON, *loc. cit.*

[142] Lib. I, cap. 13. WHITTAKER, 35. *Cf.* MAITLAND, PL. CR. GLOUC., pl. 22.

[143] Cap. vi.

[144] MAITLAND, PL. CR. GLOUC., pl. 200, 253.

[145] MAITLAND, THREE ROLLS OF RICHARD I (Pipe Roll Society, vol. 14), 107, 112. For a suggestive entry from Essex of 10 Ric. I, see PALGRAVE, ROTULI CURIAE REGIS, I, 211.

[146] MAITLAND, PL. CR. GLOUC., xxx and references there cited.

[147] SEL. PL. CR., pl. 132.

[148] *Idem,* pl. 188.

[149] HEALEY, *op. cit.,* lxxvii. *Cf.* BRACTON, *loc. cit.*

case of "aliquo submerso in mari" only.[150] In the Assize Roll, 40 Henry III, of Northumberland, a county to which the murder law did not then apparently apply, the same judgment is regularly recorded for cases of accidental death.[151] By the time of Bracton the principle could be generally stated that in case of misadventure there will be no murder, although in certain parts of England the custom is to the contrary.[152] The doctrine enunciated by Bracton did not have long to wait for legislative confirmation; it was in 1257 put in issue by the barons in their struggle with Henry III. One of the grievances in the Petition of the Barons of that year was that the *patria* was amerced as for murder in the case of many men, wandering across the realm on account of "hard times" (*caristiam temporis*), who died by hunger and starvation.[153] In the Provisions of Westminster of 1259, which were drawn up in pursuance of the plan initiated by the Provisions of Oxford, it was accordingly declared that "the Fine of Murder shall hold place upon those slain feloniously" and not if the judgment be *infortunium*.[154] And, after the general pacification, the principle was reaffirmed in the Statute of Marlborough of 1267,[155] in a provision which, after *murdrum* was forgot, later gave rise to the strange notion that accidental homicide was once punished by hanging.[156] As Maitland has indeed suggested,[157] the proximate cause of this legislation was economic in nature: there was a great scarcity of corn in 1257, perhaps due to a succession of severe storms, upon which ensued a terrible famine, such that some fifteen or twenty thousand perished in London alone.[158] It was a case for general relief: the multitude of deaths, in many cases of famine fugitives whose Englishry could not be presented, threatened the economic independence of the hundred, if *murdra* were to be exacted. But

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[150] *Ibid.*

[151] 88, SURTEES SOCIETY, 68 ff. *passim.*

[152] BRACTON, *loc. cit.*

[153] Sec. 21.

[154] 43 HENRY III, cap. 25. See STUBBS, *op. cit.* 405, sec. 22

[155] 52 HENRY III, cap. 25.

[156] See MAITLAND, PL. CR. GLOUC., xxxi, note 4.

[157] *Op. cit.*, xxx.

[158] See JOH. DE OXENEDES, CHRONICA (R. S.) 215, 218; 5 GESTA ABB. MON. ST. ALBANI, (R. S.), 389.

the statutory recognition of the doctrine as to *infortunium* was scarcely casual; it is rather a nice illustration of the working of social forces through custom into the statute-book. And it is important as the first precise and authoritative step taken in the history of English law towards the definition of felonious homicide. Only nine years after the Statute of Marlborough the doctrine of misadventure was, with qualification, applied to homicide generally.[159]

It remains to account for the disappearance of the murder law. We have stated above that *murdra* were abolished in 1340 but the statement needs some explanation. It is clear that before the end of the thirteenth century the *lex murdrorum* was out of joint with the times; nothing could indicate more precisely the extent to which this was the case than the numerous exceptions which had sprung from custom and statute to circumscribe its application. Quite apart from the many instances covered by some immunity, the result was after 1267 to restrict it to cases of homicide *per feloniam* in which the felon was unknown and the victim was neither demonstrably English nor perhaps patently villein and in some instances also neither infant nor female. But, on the other hand, the principle which underlay this result and which had supplementary roots in the system of frankpledge, of watch and ward, of hue and cry, the principle that the hundred was to some degree responsible for unavenged felonies, was to have a much longer lease of life. In the Statute of Winchester of 1285 it was applied and extended to robberies, arsons, and thefts, as well as to murders. The hundred, not excepting liberties, was given forty days within which either to have the offender or to answer for the escape and the damages.[160] The truth was that after the middle of the thirteenth century the numerous exceptions and liberties to which the murder system

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[159] 6 EDW. I, cap. 9, and *cf.* 2 EDW. III, cap. 2. The qualification was that the royal pardon was required for the release of one who accidentally caused another's death.

[160] 13 EDW. I, st. 2, cap. 1 and 2. Reaffirmed 28 EDW. III, cap. 11 and extended to Ireland, 31 EDW. III, st. 4, cap. 5. *Cf.* 3 HENRY VII, cap. 1, — "And yf eny persone be slayne or murdred in the day: and the murderer escape untaken, that the Township where the seid dede ys so don be amerced for the seid escape."

was subject had rendered it inefficient from the royal point of view. Consequently, it would seem, the murder law was in part transmuted into the law of escapes to which there were no anomalous exceptions. Yet in cases of felonious homicide and possibly even in cases of misadventure, amercements were still in addition imposed if Englishry had not been presented,[161] even though the murder law had in 1285 really lost its *raison d'être.*

The sequel came in the succeeding century. In 1339 the Commons were given opportunity to express their disapproval of the murder fine in particular and of the system of amercements in general. In that year, Edward III being at war with France and demanding a great aid of the tenth garb, the tenth wool, and the tenth lamb, the Commons demanded as the first condition of the grant that "mourdres" and certain other amercements of a stated period should be pardoned.[162] In the following year the situation of the king was even more critical and a greater subsidy of the ninths was demanded, to obtain which the king was constrained to release amongst other things his rights to the "amercements of the murdered."[163] In particular, presentment of Englishry was also done away, so that thenceforward none could on that account be impeached. The statute recites that "many Mischiefs have happened in divers Counties of England, which had no Knowledge of Presentment of Engleschrie, whereby the Commons of the Counties were often amerced before the Justices in Eyre, to the great Mischief of the People."[164] Either, as Staunforde suggests,[165] the diversity as to customs of presentment had made it difficult to satisfy the justices or owing to the infrequency of the eyres these customs had been forgotten or obscured. However this may be, the abolition of Englishry was a price which could scarce be refused his English subjects by a monarch, who as King of England had just assumed the title of King of France and looked to his sub-

[161] See GROSS, SEL. COR. ROLLS, xliii, note 4; The Eyre of Kent, 6–7 EDW. II, (24 SEL. SOC. vol. I,) 60, 65, 74, 77, 150; HORWOOD, YEAR BOOKS 30–31 EDW. I, 241; FITZHERBERT, GR. ABR., 217 Coron 2 Edw. 3.

[162] 2 ROT. PARL., 105. The Commons had obtained an earlier pardon of amercements in 1326 from 20 EDW. II. *Idem*, 8, 11; 1 EDW. III, st. 2, cap. 3.

[163] 14 EDW. III, cap. 2; 2 Rot. Parl., 128; EULOGIUM HIST., (R. S.), III, 204.

[164] 14 EDW. III, cap. 4.

[165] PLEES DEL CORON, 18a.

jects for loyal support.[166] The system of which Englishry was a part had not only been oppressive to the Commons but it had too long perpetuated a principle of discrimination against the English yeoman, which those who were called upon to conquer the French could hardly support. It is not improbable that the king and his ministers regarded the statute of 1340 as a temporary expedient to be disavowed at leisure,[167] but the Commons maintained their point.

Thus ended the episode of the *lex murdrorum*. Yet not quite. The *murdrum* of the elder days was swept away in 1340 with the presentment of Englishry but not, as we have seen, the liability of the hundred for escaped felons. In truth, for some years after that date, as Gross has shown us,[168] out of an abundance of caution or of ignorance of the statute presentments of Englishry were still made before the coroners. Nor did the term, "murder," even in the following century quite lose all its former flavor of secrecy,[169] despite the fact that in 1267 the Statute of Marlborough had set it free for its later career as the technical description for the more aggravated forms of homicide. And one relic at least of the ancient law of murder we have with us still in the coroner's inquest. In the time of Richard Coeur de Lion and thereafter, the coroner, the crown's man, was amongst other things to hold inquest over those who had suffered an inauspicious demise, that the king might not be cheated of his fine. The fine of murder has long since been forgotten but the coroner and his inquest remain. So do the customs of the dead rule the forms of today.

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[166] See PIKE, YEAR BOOKS 14–15 Edw. III, xv ff.

[167] *Cf.* ROT. PARL. 113, 128–129, 140–141.

[168] SEL. COR. ROLLS, xliii–xliv.

[169] *E.g.*, JOH. WHETHAMSTEDE, REGISTRUM ABB., (R. S.), II, 28. "Jacobus Roche . . . cum suo nequam concilio . . . quemdam Ricardum Gloucestre . . . interfecerunt, murdraverunt, et ipsum occulte sepeliverunt." (1462). *Cf.* WALSINGHAM, HIST. ANG., (R. S.), II, 196.

What seems to be an unusually early use of the term, *murdrum*, in the sense of felonious homicide will be found in 50 EDW. III, cap. 3. But for some time later the statutes usually are careful to employ the phrase, "slain and murdered." *E.g.*, the passage from 3 HENRY VII, cap. 1 in note 160.